

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

GREGORY HARDY,

Plaintiff,

v.

Case No. 2:05-cv-143  
HON. ROBERT HOLMES BELL

UNKNOWN CABRERA, M.D., et al.,

Defendants.

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**OPINION APPROVING MAGISTRATE JUDGE'S**  
**REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Plaintiff filed a complaint against several defendants and then filed a supplemental or amended complaint naming two new defendants, defendants Quinlin and McNutt. Plaintiff did not exhaust his grievance remedies against these two defendants. The Report recommends dismissal of the complaint under the total exhaustion rule. Authority exists to dismiss this complaint under the total exhaustion rule. *Jones Bey v. Johnson*, 407 F.3d 801 (6th Cir. 2005). More recently, in *Bell v. Konteh*, 450 F.3d 651, 654 (6th Cir. 2006), a panel of the Sixth Circuit reaffirmed its previous holding in *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006), that “[w]hen a prisoner’s

complaint contains both exhausted and unexhausted claims, the unexhausted claims should be dismissed without prejudice while the exhausted claims are allowed to proceed.” Therefore, the Court rejected the total exhaustion rule in favor of the partial exhaustion rule in § 1983 cases. The Supreme Court has granted certiorari to resolve the partial/total exhaustion issue. *See Williams v. Overton*, 126 S. Ct. 1463 (2006); *Jones v. Bock*, 126 S. Ct. 1462 (2006). Accordingly, the court will follow *Bell* and dismiss only defendants Quinlin and McNutt.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as modified by this Opinion.

Date: August 22, 2006

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
CHIEF UNITED STATES DISTRICT JUDGE